

FILED
MISSOULA, MT
2007 APR 4 AM 9 45
PATRICK E. LUFFY
BY _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

GERALD ALLEN ANTHONY,)	CV 05-03-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

Petitioner Anthony has filed a motion to withdraw his position for writ of habeas corpus so that me may pursue further relief in the state courts. In response, the Court advised Anthony that if his motion is granted, he would likely be time-barred from refiling a petition in this Court and may also be barred from proceeding with a second or successive petition. The Court then gave Anthony an opportunity to either proceed with the current Petition or dismiss the Petition as he had earlier requested. (Doc. No. 13, Order dated February 13, 2007.) Anthony chose to persist in his motion to dismiss. (Doc. No. 14.)

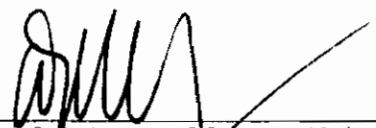
Based on Anthony's response, United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this

matter on March 1, 2007, in which he recommends dismissal of Anthony's Petition. Anthony did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that Anthony's motion to withdraw his Petition (Doc. No. 12) is GRANTED, and the case is DISMISSED.

DATED this 4th day of April, 2007.



Donald W. Molloy, Chief Judge
United States District Court

